

DEC 19 2000

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications Of)	MM Docket No. 97-128
)	
Martin W. Hoffman, Trustee-in-Bankruptcy,)	
for Astroline Communications Company)	
Limited Partnership)	
)	
For Renewal of License of)	
Station WHCT-TV, Hartford, Connecticut)	File No. BRCT-881201LG
)	
and)	
)	
Shurberg Broadcasting of Hartford)	
)	
For Construction Permit for a New)	File No. BPCT-831202KF
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	

To: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION OF THE
 JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Entravision Holdings, LLC ("Entravision"), the licensee of Station WUVN-TV, Hartford, Connecticut (formerly Station WHCT-TV), and Martin W. Hoffman, the Trustee-In-Bankruptcy for Astroline Communications Company Limited Partnership, the former licensee of Station WHCT-TV ("Trustee") (collectively, the "Opponents")¹, by their attorneys and pursuant to Section 1.106(g) of the Commission's Rules, hereby oppose the Petition for Reconsideration filed by Richard P. Ramirez ("Ramirez") on December 8, 2000. Ramirez, in his Petition, challenges the well-reasoned opinion of the Commission in its *Memorandum Opinion and Order*, FCC 00-387,

¹ The assignment of the license of Station WUVN-TV, from the Trustee to Entravision, was consummated on December 12, 2000.

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released November 8, 2000 (“*Order*”), granting, *inter alia*, the Joint Request for Approval of Settlement Agreement (“Joint Request”). The claims presented by Ramirez are wide of the mark and are evidently intended only to delay the final resolution of an administrative hearing that has been settled after lengthy litigation and a finding in Ramirez’s favor. They should be dismissed or denied on an expedited basis. In support thereof, Opponents state as follows:

A. INTRODUCTION

Opponents are surprised that Ramirez, who claims to be offended by the behavior of a party in the underlying litigation that delayed a proceeding, would himself engage in the filing of what we believe is no more than a “strike pleading.” Ramirez was a party to the WHCT administrative hearing, by virtue of his role as the general partner of the former Station licensee (Astroline Communications Company Limited Partnership) that was designated for hearing on issues related to whether misrepresentations had been made to the Commission. See *Memorandum Opinion and Order & Hearing Designation Order*, 12 FCC Rcd 5224 (1997) (“*HDO*”). Following the trial-type hearing, Ramirez and the former licensee were found not to have engaged in any misrepresentations and the former licensee was deemed qualified for a renewal of license. *Decision*, FCC 99D-1, released April 16, 1999. This should have been enough to address fully Ramirez’s interest in the proceeding.

Instead, Ramirez now seeks reconsideration of the *Order* so as to continue his obvious vendetta against Alan Shurberg, the competing applicant, who Ramirez views as the cause of the ills Ramirez alleges he and the former licensee have suffered. In so doing, Ramirez argues that Shurberg is not entitled to benefit from the settlement of the proceeding and that the Commission should not have waived Section 73.3523 to approve the settlement. These claims fail to accord

with the record and were appropriately rejected in the *Order*. Ramirez has not now established any new basis for reconsideration of the Commission's actions and none whatsoever exists.

B. RAMIREZ'S PETITION IS PROCEDURALLY DEFECTIVE

Owing to procedural defects in Ramirez's pleading, the Commission need not reach its merits and should dismiss the Petition forthwith. Sections 1.106(i) and 1.52 of the Rules require that in a Petition for Reconsideration filed by "a party who is not represented by an attorney [the party shall] sign and verify the document and state his address." Ramirez failed to verify his pleading and did not provide his address, thus violating Section 1.52. The failure to adhere to the rules warrants dismissal of the Ramirez Petition. *See Scottsboro, Alabama; et al.*, 6 FCC Rcd. 6111 (1991).

C. RAMIREZ'S ARGUMENTS ARE REPETITIVE

Turning to the merits, Ramirez merely restates the arguments he presented in his "Opposition of Richard P. Ramirez to the Joint Request for Approval of Settlement Agreement," which he filed on May 17, 2000. It is well-settled that in order for a party to receive reconsideration from the Commission, it must present new facts or changed circumstances meeting the requirements of Section 1.106(b)(2). *See WWIZ, Inc.*, 37 FCC 685 (1965), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965). In this case, the arguments were fully set forth in Ramirez's Opposition. No new facts or changed circumstances have been shown in any regard, and the Commission fully reviewed and analyzed the arguments earlier presented by Ramirez. To give Ramirez a second bite at the apple would serve no purpose and would be an inefficient use of the Commission's limited resources. *Cf. Rosalia Bianco*, 3 FCC Rcd 2014 (1988). Therefore, the Petition should be summarily dismissed.

D. RAMIREZ'S CLAIMS ARE WITHOUT MERIT

Even assuming that the Commission ignores the procedural defects attendant to Ramirez's pleading and considers it on the merits, the arguments are without substance.

Ramirez's principal contention is that the Commission should not have waived Section 73.3523 of the Rules and Section 311(d)(3) of the Communications Act so that Shurberg could receive funds from the settlement in excess of his legitimate and prudent expenses in prosecuting his application. The Commission addressed this issue in the *Order*, when it determined that the rules could be waived in this instance because the unusual circumstances of the case precluded it being used by other parties that might file objections for the purpose of securing a financial return. In particular, the unusual length of time this matter has been pending and the diligent prosecution of issues by Shurberg are such that they could hardly be replicated by others. Considering these facts, a waiver was found to be consistent with prior Commission precedent, a result that Ramirez does not now contest. *See EZ Communications, Inc.*, 14 FCC Rcd 20518 (1999); *Trinity Broadcasting of Florida, Inc.*, 14 FCC Rcd 20518 (1999).

Likewise, the waiver was, contrary to Ramirez's claim, clearly in the public interest. The use of a "white knight" settlement brought a halt to a hearing proceeding that had extended over a decade and produced a settlement that benefitted the Station's creditors. While "white knights" may generally be disfavored by the Commission, this is not a case where such a policy should be applied. Here, as the Commission recognized, other parties will not have an incentive to follow in the path of Shurberg. Not only are comparative renewal hearings no longer part of the Commission's regulatory landscape, but few parties, if any, would be expected to expend the time that Shurberg did in contesting such a matter. Hence, the public interest will not be harmed by a

grant.

The recent decision in *Chameleon Radio Corporation*, FCC 00-397, released December 1, 2000, relied on by Ramirez, is inapposite. In *Chameleon*, the party seeking the use of a “white knight” that would settle the case and provide compensation, had already been found not to be qualified as a licensee, following a trial-type hearing and an appeal to the Commission. *See also Dorothy O. Schulze and Deborah Bringham*, 12 FCC Rcd 2602 (1997), *recon. denied*, 13 FCC Rcd 3259 (1998), *aff'd sub nom.* 168 F. 3d 1354 (D.C. Cir. 1999). Here, of course, Astroline Company Limited Partnership was found to be fully qualified. Hence, there was a separate, and further, basis for deviating from, and not applying, the “white knight” policy.

E. AN AUCTION OF THE SPECTRUM FOR CHANNEL 18 IS NOT PROPER

Finally, Ramirez argues that, in accordance with Section 309(j) of the Communications Act, the Commission has the authority to award spectrum licenses by the auction process. However, he fails to recognize that a system of competitive bidding can only be used by the Commission in the awarding of an *initial* license or construction permit. *See Competitive Bidding Order*, 13 FCC Rcd 15920, 15923-15924 (1998). In this case, the WUVN license is (and has always been) in good standing. It is not an initial license. The Commission did not suspend, terminate nor remove the license from the original licensee, Astroline Communications Company Limited Partnership. Rather, the license was duly assigned to the Trustee and then to Entravision pursuant to the Joint Request and the Bankruptcy Settlement Agreement. On such bases, an auction is not needed nor authorized. *See Channel 32 Hispanic Broadcasters, Ltd.*, FCC 00-380, released November 15, 2000.

Moreover, even if Ramirez were correct in claiming that Section 309(l) of the

Communications Act applies to the instant case, the Commission merely has *discretion* to use auctions in the “resolution of pending mutually exclusive applications for new commercial radio and television stations filed before July 1, 1997.” *Competitive Bidding Order, supra*, 13 FCC Rcd at 15931. In this case, since Entravision is accurately depicted as a “white knight” by the Commission, and therefore not part of an abusive filing scheme, the policy generally disfavoring settlements involving buy-outs by non-applicant third parties is inapplicable. In addition, the limitations referred to by Ramirez on “white knight settlements” are simply not relevant. As a result, the underlying purpose of the competitive bidding system for comparative initial licensing cases is not advanced in this case. The Commission, therefore, has no basis on which to conduct an auction of the WUVN license.

WHEREFORE, it is respectfully requested that the Petition for Reconsideration filed by Ramirez be dismissed or, in the alternative, denied. In order for the Commission to evidence to parties that it will not entertain the filing of meritless pleadings seeking to delay final resolution of matters, such as Ramirez’s Petition, we urge the Commission to render its decision on an

expedited basis.

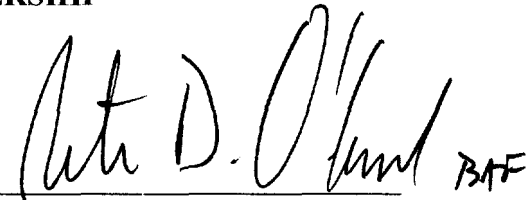
Respectfully submitted,

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Dated: December 19, 2000
112783.2


CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 19th day of December, 2000, served a copy of the foregoing, "Opposition to Petition for Reconsideration of the Joint Request for Approval of Settlement Agreement," upon the following parties by first-class mail, postage prepaid:

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A handwritten signature in black ink, appearing to read 'Barry A. Friedman', is written over a horizontal line.

* By Hand